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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 279 Misc.

CARLOS ALVAREZ GARCIA, PETITIONER

v.

H. R. LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 39-42) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 29, 1953 (R. 43). A petition for rehearing was denied on November 2, 1953 (R. 44). The petition for a writ of certiorari was filed on December 2, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 22 of the Internal Security Act of 1950, providing for the deportation of aliens who have been members of the Communist Party at any time after entering the United States, is invalid as violating the *ex post facto*, bill of attainder, or due process provisions of the Constitution.

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950, the Act of October 16, 1918 (40 Stat. 1012), provided, at the time involved in this case, as follows (8 U.S.C., Supp. V):[1]

§ 137. * * *

Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * * (iv) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political

[1] The statutory provisions here involved were repealed by Sec. 403(a)(16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279) which recodified and reenacted these provisions without material change. See *id.*, Sec. 241(a), 66 Stat. 204.

or geographical subdivision of any foreign state * * *;

* * * * *

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law: * * *;

(G) Aliens who write * * * any written or printed matter * * * advocating or teaching * * * (i) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; * * *;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, * * * written or printed matter of the character described in subparagraph (G),[2]

§ 137-3 * * *

(a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 137(2) of this title, shall, upon the warrant of the At-

[2] The substance of subsections (F), (G), and (H) of 8 U.S.C. (Supp. V) 137(2) was, at the time of the original warrant of arrest in the instant case, contained in 8 U.S.C. (1946 ed.) 137(c), (d), and (e). Subsection (C) derived from Section 22 of the Internal Security Act of 1950, 64 Stat. 1006.

torney General, be taken into custody and deported * * *.

STATEMENT

Petitioner, a Mexican national, was lawfully admitted to the United States for permanent residence on June 15, 1922 (Ex. B, p. 49).[3] He has resided continuously in this country since that date, except for visits to Mexico. His last return and consequently his last entry into the United States was on May 15, 1949, at San Ysidro, California (Ex. B, pp. 29, 34).

A deportation warrant for the arrest of petitioner was issued on August 12, 1952, charging, in substance, that petitioner was subject to deportation under the Act of October 16, 1918, as amended (8 U.S.C. (Supp. V) § 137), as an alien who before his last entry into the United States had been a member of the Communist Party of the United States (Ex. B, p. 55).[4]

On August 18, 1952, a hearing was held under the warrant at which petitioner was represented by counsel. Testifying at the hearing, petitioner admitted that he had been a member of the Communist Party in 1939 and 1940 (Ex. B, pp. 40, 41).

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[3] The immigration file was introduced in evidence in the District Court as Exhibit B. It comprises pages 26-55 of the Transcript of Record in the Court of Appeals, which has been certified to this Court as an exhibit under Rule 38 of the Revised Rules of the Supreme Court.

[4] 8 U.S.C. (Supp. V) § 137-3(a) made subject to deportation any alien who at the time of entry or thereafter was, *inter alia*, a member of any one of the classes of aliens enumerated in Section 137(2). That section referred to aliens who "shall be or *shall have been* members of * * * (C) * * * (i) the Communist Party of the United States * * *" [emphasis added].

A sworn statement made by petitioner to an investigator and immigrant inspector of the Immigration and Naturalization Service on June 19, 1952, was introduced in evidence (Ex. B, pp. 48-54). In that statement petitioner admitted that he had been a member of the Communist Party of the United States "in 1939 up to 1940, for two years" (Ex. B, p. 50). On August 20, 1953, the hearing officer rendered a decision to the effect that petitioner was deportable under the Act of October 16, 1918, as amended, because prior to May 15, 1949, the date of his last re-entry, he was a member of the Communist Party of the United States (Ex. B, pp. 29-31). Specifically, the hearing officer found that petitioner "voluntarily became a member of the Communist Party of the United States at Los Angeles, California, about or during 1939 and maintained that membership for a period of approximately two years thereafter" (Ex. B, p. 30). Petitioner appealed from that decision, but the Board of Imigration Appeals dismissed the appeal on October 23, 1952 (Ex. B, p. 28). Thereafter, on October 29, 1952, a warrant of deportation issued against petitioner, and since that date petitioner has been detained in the custody of the District Director of the Immigration and Naturalization Service at Los Angeles (Ex. B, p. 27).

On December 1, 1952, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of California, in which it was alleged that petitioner was being unlawfully detained (R. 1-5). On Decem-

ber 18, 1952, the District Court denied the petition for a writ of habeas corpus (R. 25).

On appeal, the Court of Appeals for the Ninth Circuit unanimously affirmed (R. 39-42).

ARGUMENT

As petitioner states (Pet. 2), the sole legal question presented by this case will be governed by the Court's decision in *Galvan* v. *Press*, No. 407, this Term. The factual distinctions between this and the *Galvan* case which petitioner alleges do not present any different question for decision by this Court. If Section 22 of the Internal Security Act of 1950 is constitutional, petitioner is deportable even though he allegedly joined the Communist Party out of poverty (Pet. 5-7), for the statute does not distinguish between alien Communists on grounds of their motive in entering the Party. Similarly, no distinction is made on the basis of time of membership (Pet. 7-9), although if such a distinction were made, the fact that petitioner's membership terminated in 1940, just after this Court's decision in *Kessler* v. *Strecker*, 307 U. S. 22, in 1939, would, if anything, tend to sustain the application of the statute to him. See *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 593-596, where this Court observed that at that time alien Communists were expelled en masse as a matter of Party strategy.

The hearing officer was under no misapprehension as to the relationship between the Workers Alliance and the Communist Party (Pet. 9-11). The distinction between the two organizations was

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carefully brought out in the statement given by petitioner on June 19, 1952, which was introduced in evidence at the deportation hearing.[5] At the deportation hearing the difference between the two organizations was noted and petitioner was asked why, in his alien registration form executed in October 1940, he listed membership in the Workers Alliance and not in the Communist Party (Ex. B, pp. 41-42). The hearing officer's decision unequivocally states that petitioner belonged to both organizations.

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[5] The following dialogue appears in the transcript of the June 19th statement (Ex. B, pp. 50-52):

"Q. Have you in the past been a member of the Communist Party of the United States? A. Yes.

"Q. During what period of time were you a member of the Communist Party of the United States? A. I was in 1939 up to 1940, for two years.

"Q. Where were you a member of the Communist Party of the United States? A. Los Angeles.

* * *

"Q. Were you also a member of the Workers Alliance at that time? A. Yes.

"Q. During what period of time did your membership extend in the Workers Alliance? A. 1938 to 1940.

"Q. Did you join the Workers Alliance before you joined the Communist Party? A. I joined the Workers Alliance before I joined the Communist Party.

"Q. Did the Workers Alliance and the Communist Party meet in the same place? A. Yes.

"Q. Did you attend the meetings of each organization? A. I went there to meetings of the Communist Party and the Workers Alliance.

"Q. How were you able to distinguish between the meetings of the Workers Alliance and the Communist Party? A. The Alliance met on Friday every two weeks and the Communist Party met only once a month, on Tuesday or Wednesday, I don't remember which."

* * *

"Q. Did you understand that the Communist Party and the Workers Alliance were different organizations? A. Yes."

Thus, there is no material factual distinction between this case and *Galvan* v. *Press*. The sole question here raised, the constitutionality of Section 22 of the Internal Security Act of 1950, will be disposed of when this Court decides the *Galvan* case.[6]

CONCLUSION

We respectfully suggest, therefore, that this Court defer decision on the instant petition for certiorari until decision is reached in *Galvan* v. *Press*.

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Assistant Attorney General.
BEATRICE ROSENBERG,
HOWARD ADLER, JR.,
Attorneys.

DECEMBER, 1953.

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[6] Counsel for petitioner, one of whom is counsel for Galvan, state (Pet. 12) that Galvan will also urge that he should have been given a hearing before an independent hearing officer appointed pursuant to the requirements of the Administrative Procedure Act. However, the brief in *Galvan* does not discuss this point and, in any case, we doubt that the issue is properly before the Court in *Galvan*, since it was not urged in the Court of Appeals and is not raised in the petition for a writ of certiorari. See Brief for the Respondents, *Tom We Shung* v. *Brownell*, No. 241, this Term, p. 14.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 118

CARLOS ALVAREZ GARCIA, PETITIONER

v.

H. R. LANDON, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

This case involves a habeas corpus proceeding by which petitioner, a Mexican national who had been lawfully admitted to the United States in 1922, challenged the validity of a warrant dated October 29, 1952, directing his deportation on the ground that he had been a member of the Communist Party of the United States in 1939 and 1940. The petition for a writ of certiorari, which sought review of a judgment sustaining an order dismissing the petition for habeas corpus, was filed December 2, 1953, and was granted June 7, 1954. 347 U. S. 1011.